

AN ORDINANCE PROPOSED BY SENIOR POLICE OFFICER MICHAEL BANJA, ATLANTA POLICE DEPARTMENT, AND MEMBER OF ATLANTA CHAPTER SOUTHERN STATES PBA.

AN ORDINANCE, ON BEHALF OF _____, FOR THE PURPOSE OF AMENDING CHAPTER 146 (ENTITLED TAXATION) TO PROPOSE ENACTMENT OF ARTICLE V, ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES SALES TAX. TO PERMIT THE TAXATION OF SALES OF ALCOHOLIC BEVERAGES SOLD FOR CONSUMPTION ON PREMISES AS LICENSED AND PERMITTED BY CHAPTER 10, WITH FUNDS ACCRUED TO SUPPLEMENT THE PENSION FUND FOR CITY OF ATLANTA EMPLOYEES.

A PROPOSED ORDINANCE FOR THE PURPOSE OF AMENDING CHAPTER 146 (ENTITLED TAXATION) TO PROPOSE ARTICLE V, ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES SALES TAX. TO PERMIT THE TAXATION OF SALES OF ALCOHOLIC BEVERAGES SOLD FOR CONSUMPTION ON PREMISES AS LICENSED AND PERMITTED BY CHAPTER 10, WITH FUNDS ACCRUED TO SUPPLEMENT THE PENSION FUND FOR CITY OF ATLANTA EMPLOYEES.

WHEREAS, the crisis involving funding of the employee's pension fund cannot be solved without radical measures.

WHEREAS, Code Section 3-13-3 of the Official Code of Georgia Annotated states: A local government shall be authorized to levy and collect any local taxes on any sale of alcoholic beverages made within its jurisdiction by a licensee as are otherwise authorized by law.

WHEREAS, section 146 of the Atlanta City Code needs to be amended to permit taxation of sales of alcoholic beverages for consumption on premises as defined in Chapters 10 and 146 and licensed by the City of Atlanta.

WHEREAS, section 146 already establishes taxes levied upon occupancy of hotels and motels, as well as rental cars. A taxation on upon sales of alcoholic beverages sold for consumption on the premises of licensed businesses may supplement the pension fund to a sustainable state.

WHEREAS, this proposal in no way limits the authority of the Mayor or City Council to propose or amend any other changes to the pension fund for City of Atlanta Employees.

WHEREAS, the taxation on sales of alcoholic beverages for consumption on premises should not directly affect the rights of property owners, business license holders, or disproportionately affect tourism or trade in the City of Atlanta.

IT IS HEREBY PROPOSED TO CITY COUNCIL TO AMEND CHAPTER 146 OF ATLANTA CITY CODE BY ENACTING THE FOLLOWING ORDINANCES:

ARTICLE V – ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES SALES TAX

Sec. 146-125 Definitions

For purposes of this article, the following terms shall have the following meanings respectively ascribed to them.

Alcoholic beverages means and includes but is not limited to malt beverages, wine and distilled spirits.

Auditorium means a permanent building or hall used for concerts, speakers, plays and similar activities and that has a seating capacity in excess of 3,500.

Bar means an establishment having a minimum capacity of 25 persons and a maximum capacity of 100 persons per the City of Atlanta Fire Code that does not meet the definition of a restaurant, nightclub, lounge, farm, winery, convention center, hotel, brewpub, open air cafe or sidewalk cafe, that is primarily devoted to selling and dispensing alcoholic beverages by the drink for on-premises consumption. The bar must make food available to its patrons.

Bottle house means any place of business open to the public or any private club which allows patrons or members to bring in and consume alcoholic beverages on the premises.

Brewpub means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and solely in draft form. As used herein, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Distilled spirits or spirituous liquors means all beverages containing alcohol obtained by distillation or containing more than 21 percent alcohol by volume, including fortified wines.

Hotel means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which 50 or more rooms are used for the sleeping accommodations of these guests, and having one or more public dining rooms, with an adequate and sanitary kitchen and a seating capacity of at least 40 where meals are regularly served to those guests, the sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out in this definition for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a lounge, restaurant or nightclub in their premises and the holder of the franchise shall be included in the definition of hotel.

Licensed Premises means any business or organization in possession of or required to possess a license as required by Ordinance 10-59 which permits the sale of alcoholic beverages by the drink or for the consumption of alcoholic beverages on the licensee's premises. This term shall include, but not be limited to auditoriums, bars, bottle houses, brewpubs, hotels, lounges, nightclubs, open-air cafes, private clubs, restaurants, sports coliseums, suite hotels, and tasting rooms.

Lounge means a separate room connected with a part of and adjacent to a restaurant or located in a hotel or located in any airport owned by the city, with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and shall have a seating capacity for at least 50 persons. However, lounges located in any airport owned or operated by the city shall be exempt from the seating capacity requirement. A lounge that is operated on a different floor in the premises or in a separate building or that is not connected to or adjacent to a restaurant shall be considered a separate establishment and an additional license fee shall be paid therefore.

Malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product or any combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine.

Nightclub means an establishment having a capacity of at least 100 persons per the City of Atlanta Fire Code, with all booths and tables unobstructed and open to view, dispensing alcoholic beverages and in which music, dancing or entertainment is conducted. All such establishments shall be equipped with air conditioning. The principal business of a nightclub shall be entertaining, and the serving of alcoholic beverages shall be incidental thereto.

Open air cafe means an establishment which serves food during all hours of operation and which has a seating capacity of at least 40 and which is located within the pedestrian court area of a shopping and retail entertainment center. Such an establishment may be licensed for on-premises consumption only.

Outdoor dining area means a space in which a licensee serves food and beverages as part of the operation of the licensed premises as a sidewalk cafe. An outdoor dining area must be located directly in front of a licensed restaurant and may only be separated from the licensee's premises by a sidewalk. No part of a sidewalk cafe shall be located within a public right-of-way. The width of an outdoor dining area shall not exceed the width of the licensed premises. An outdoor dining area shall contain no more than 50 percent of the premises total seating capacity. The space within an outdoor dining area shall be enclosed within a clearly delineated area, which is surrounded by a continuous physical barrier no less than 36 inches and no more than 40 inches in height. An outdoor dining area shall have a single point of ingress and egress that is controlled by the licensee. Music and/or live entertainment shall not be provided within an outdoor dining area.

Private club means a corporation chartered, organized and existing under the laws of the state, exempt from federal income taxes pursuant to section 501(c) of the Internal Revenue Code, as amended, actively and continuously in operation within the city as a nonprofit corporation for at least one year immediately prior to the application for a license under this chapter and during which time such corporation shall have had continuously not less than 250 members whose names, current addresses and current telephone numbers shall be kept listed on the club premises and made available for inspection on the premises by the Atlanta Police Department during all hours during which the private club is open for business, which members shall have regularly paid monthly, quarterly, semiannual or annual dues.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least 40 people, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. However, restaurants located in any airport owned or operated by the city shall be exempt from the seating capacity requirement. At least one meal per day shall be served at least six days per week, with the exception of holidays, vacations and periods of redecorating, and the serving of those meals shall be the principal business conducted, with the serving of distilled spirits to be consumed on the premises as only incidental thereto.

Sports coliseum means premises operated exclusively for the purpose of providing major league sporting events of basketball, hockey or similar athletic or amusement events for attendance by the public and where such premises contain a minimum of 3,000 square feet.

Suite hotel means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where 50 or more suites, each consisting of at least one bedroom, a living room and a bathroom, are offered for adequate pay to travelers and guests, whether transient, permanent or residential, and where alcoholic beverages are served and the price of such beverages is included in the suite rates.

Tasting room means an outlet operated by a farm winery for the promotion of a farm winery's wine by providing complimentary samples of such wine to the public and for the sale of such wine at retail.

Wine or vinous liquors means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes but is not limited to all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to this definition of wine.

146-126 AUTHORITY

(a) Authority. The chief financial officer shall administer and enforce this article for the levy and collection of the tax.

(b) Rules and regulations. The chief financial officer shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state or the constitution of this state or the United States for the administration and enforcement of this article and the collection of the tax under this article.

(c) Records required. Every purveyor of alcoholic beverages for consumption on licensed premises subject to this article shall keep such records, receipts, invoices and other pertinent papers in such form as the chief financial officer may require.

146-127 ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES TAX LEVIED; COLLECTION

a) There is hereby assessed and levied an excise tax upon each alcoholic beverage sold for consumption on a licensed premises. The tax levied pursuant to this article shall be in the amount of one percent of the purchase price of each alcoholic beverage as defined herein. The tax levied pursuant to this article shall be imposed only at the time when and the place where a customer pays for the beverage intended to be consumed on the premises of a licensed establishment. The customer who pays for the alcoholic beverage that is subject to the tax levy as provided in this article shall be liable for the tax. The tax shall be paid by the customer to the licensed premises. The tax shall be a debt of the customer to the licensed premises until it is paid and shall be recoverable at law in the same manner as authorized for the recovery for other debts.

(b) The licensed premises collecting the tax shall remit the tax to the chief financial officer of the City of Atlanta, Georgia. Every licensed premises subject to the tax levied by this article shall be liable for the tax at the rate of one percent upon the purchase price of alcoholic beverages actually collected or the amount of taxes collected from the customers, whichever is greater.

146-128 PURPOSES FOR PROCEEDS FROM TAX

The following projects and purposes for which the proceeds of the tax levied by this article are to be expended are specified as follows:

- (1) The pension fund established for employees of the City of Atlanta.

146-129 STATEMENT REQUIRED SHOWING GROSS SALES OF ALCOHOLIC BEVERAGES SOLD FOR CONSUMPTION ON PREMISES.

- (a) On or before the 20th day of each month following the month of June, the licensed premises liable for the tax provided for herein shall transmit to the chief financial officer for the city, a statement showing the gross sales of alcoholic beverages sold for consumption on premises and gross taxes collected by authority of this article for each preceding calendar month. Along with said statement, the licensed premises shall submit to the chief financial officer the net taxes due for that particular month.
- (b) Failure to remit taxes by the due date shall subject the rental motor vehicle concern to a penalty of five percent of the tax then due and in addition to such penalty, interest thereon on the unpaid principal amount due, computed at the rate of one percent per month.

146-130 RECORDS

In order to aid in the administration and enforcement of the provisions of this article and to collect all the tax imposed, all licensed premises are hereby required to keep a record of all rental charges for rental motor vehicles and taxes collected which are related thereto. Said records shall be open for inspection and copying by any duly authorized agent of the city during regular business hours.

146-131 DEFICIENCY DETERMINATIONS

- (a) If the chief financial officer is not satisfied with the return or returns of the excise tax provided for herein, or the amount of the tax required to be paid to the city by any licensed premises he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more monthly periods.
- (b) The amount of the determination made by the chief financial officer shall bear interest at the rate of one percent per month or fraction thereof from the due date of the taxes found to be due by him.
- (c) The chief financial officer or his designated representative shall give to the licensed premises a written notice of any such determination. The notice may be served personally or by mail and if by mail the service shall be addressed to the operator or the owner of the rental motor vehicle concern at the address as the same appears in the records of the chief financial officer as provided to him by each rental motor vehicle concern. Service by mail is complete when delivered by certified mail with a receipt signed by an addressee or agent of the addressee.
- (d) Except in cases of failure to make a return, every notice of deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period in which the amount proposed to be determined or within three years after the return is filed, whichever period shall expire last.

146-132 FAILURE TO MAKE A RETURN

(a) If any licensed premises fails to make a return, the chief financial officer shall make an estimate of the excise tax due. The estimate shall be made for the period or periods in respect to which the rental motor vehicle concern has failed to make the return and shall be based upon such information which is or may come into the possession of the chief financial officer. Written notice shall be given in the manner as prescribed above in section 146-131.

(b) The amount of the determination shall bear interest at the rate of one percent per month or fraction thereof from the 20th day of the month following the monthly period for which the amount of any portion thereof should have been returned until the date of payment.

146-133 AUDIT AUTHORITY

Duly authorized employees of the city upon exhibition of identification and during regular business hours may examine and copy the books, papers, records, financial reports equipment and other facilities if necessary of any licensed premises in order to verify the accuracy of any return made pursuant to this article, or if no return is made by the rental motor vehicle concern, to ascertain or determine the amount of tax required to be paid.

146-134 WITHHOLDING TAX ON SALE OF BUSINESS

(a) If any licensed premises liable for any amount under this article transfers or sells its business or quits the business, its successors or assigns shall withhold sufficient amounts from the purchase price to cover the amount required to be paid pursuant to this article until the former owner or operator of the licensed premises produces a receipt from the chief financial officer or his designee showing that the indebtedness has been paid or a certificate stating that no amount is due.

(b) If the purchaser of a licensed premises fails to withhold from the purchase price as required herein such purchaser shall be personally liable for the payment of the amount of the outstanding tax required to be withheld by him to the extent of such purchase price.

146-135 PENALTY FOR VIOLATION

(a) In addition to the interest charges and delinquent penalties specified in this article any person violating any provision of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished by the municipal court for the City of Atlanta in accordance with the limits established by the City Charter for the City of Atlanta. Such persons shall be guilty of a separate offense for each and every day during which any violation of any provision of this article is committed, continued, or permitted by that person and shall be punished accordingly.

(b) The tax levied by this article shall be effective on the first day of June, 2011 and shall continue until its permissible existence shall expire as provided by law, or until otherwise terminated by the Georgia General Assembly or the Atlanta City Council.